SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 731 and 732

RAYMOND W. STARR, ATTORNEY GENERAL, IN THE NAME OF AND ON BEHALF OF THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

B. C. SCHRAM, RECEIVER OF THE FIRST NATIONAL BANK—DETROIT, A NATIONAL BANKING ASSOCIATION.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

I.

Opinion of Court Below.

The opinion in the District Court for the Eastern District of Michigan, Southern Division (R. 117) is reported in 24 Fed. Supp. 888.

The opinion of the Circuit Court of Appeals of the Sixth Circuit is reported in 118 F. (2d) 548.

II.

Jurisdiction.

1. The date of the decision to be reviewed is March 14, 1941.

Petition for rehearing was filed by appellant on April 5, 1941 (R. 172) and denied October 16, 1941 (R. 219).

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240 of the Judicial Code of 1911, as amended by the act of February 13, 1925, U. S. C. A. Title 28, Sec. 347.

3. This case involves the construction of the limitation of the field of applicability of the statutes of the State of Michigan in the liquidation of a national bank under the National Banking Act, and the conflict between the ruling of the District Court for the Eastern District of Michigan, Southern Division, and the Circuit Court of Appeals of the Sixth Circuit, to which said case was appealed, and also the conflict between the decision of the latter Court and the decision of the Circuit Court of Appeals of the Ninth Circuit, and the conflict between the instant decision of the Circuit Court of Appeals of the Sixth Circuit and the decisions of this Court.

4. The cases believed to sustain said jurisdiction are as follows:

First National Bank of San Jose v. *California,* 262 U. S. 366, 43 Sup. Ct. 602, 67 L. Ed. 1030;

National City Bank of New York v. *The People of the Philippine Islands,* 302 U. S. 651, 58 Sup. Ct. 269, 82 L. Ed. 504.

III.

Statement of the Case.

This has already been stated in the preceding petition (page 1) which is hereby adopted and made a part of this brief.

IV.

Specification of Errors.

1. The Court erred in holding that the State of Michigan should have followed the procedure prescribed by Act No. 205 of the Public Acts of Michigan for 1925 with respect to the estates of missing persons.

2. The Court erred in holding that the State of Michigan could not proceed under its escheat statutes, and particularly Act No. 238 of the Public Acts of Michigan of 1897, as amended, for the administration of the estates of missing persons.

3. The Court erred in holding that the National Banking Act of the United States constitutes such a complete system for the winding up of national banks that the attempt by the State of Michigan to escheat escheatable property in the possession and under the control of national banks and receivers of national banks constitutes an unlawful interference with the liquidation of a national bank.

4. The Court erred in upholding the tontine right of the liquidating bank to retain money belonging to absent or unknown depositors.

5. The Court erred in holding that the seven year period of inactivity must antedate the suspension of the bank.

6. The Court erred in holding that only accounts of natural persons can be subject to escheat under the Michigan laws.

7. The Court erred in holding that the Receiver was not required to account to the State of Michigan for unsurrendered certificates of deposit, cashiers' checks, certified checks, drafts on correspondent banks, Christmas Club checks and like *unsurrendered negotiable instruments.*

8. The Court erred in holding that the instant case is governed by the case of *First National Bank of San Jose* v. *State of California,* 262 U. S. 366.

9. The Court erred in holding the Michigan escheats laws to be in closer kin to "illegitimate" laws of forfeiture than to legitimate laws of escheat.

ARGUMENT.

Summary.

The historic facts upon which this cause is based are set forth succinctly and *seriatim* in the Stipulation of Facts and the Supplemental Stipulation in the court of first instance (R. 45-99) and in the statutes involved, which are a matter of permanent record in the respective statute books of the United States and of the State of Michigan.

The pertinent facts in the course of this cause in the lower courts are set forth in the petition herewith filed, and to which reference is made. The questions involve only the construction of the law in its application to the facts, by the decision of the lower court. The position of appellant is that the Circuit Court of Appeals of the Sixth Circuit is in disagreement with the Circuit Court of Appeals of the Ninth Circuit upon a similar state of facts in a like matter; that its decision as to the Michigan escheats statutes, their character and intent, is in conflict with that of the Michigan Supreme Court; that its decision is in conflict with the decisions of this Court; and that the instant case and the ques-

tions involved are matters of such public interest, compassing as they do the entire field of national bank liquidation in practically every state in the Union, as to make advisable an authoritative and elucidating decision upon the questions involved.

As to Points A to F inclusive of the reasons relied upon for the issuance of the writs:

POINT A.

The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and the applicability to the case at bar is in conflict with the decision of the Circuit Court of Appeals of the Ninth Circuit, in a like matter, in the cases of:

Alaska v. *First National Bank of Fairbanks,* 22 F. (2d) 377;
Alaska v. *First National Bank of Fairbanks,* 41 F. (2d) 186.

POINT B.

The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is in conflict with the applicable local decisions.

The Supreme Court of Michigan has held that the statutes of escheat relied upon herein are applicable proceedings in the premises. See *Braun* v. *McPherson,* 277 Mich. 396. This was an action to recover damages under the escheatable estates statutes, *i. e.,* under Act 238 of the Public Acts of Michigan for 1897, as amended. Plaintiff's suit was dismissed by the Circuit Judge on defendant's motion. The Court construed the various escheats statutes, under which the action was brought, and concluded that they were not

only constitutional, but the proper procedure. The conservator character of the statute is clearly set forth by the Chief Justice on page 403, as follows:

> "Escheat proceedings are not solely for the benefit of the State. Instead the statutory proceeding clearly contemplates that under certain defined conditions property becomes *prima facie* an escheat. Thereupon the State takes possession of the property or the proceeds thereof *in the capacity of a conservator* for the benefit of any person lawfully entitled to it. Any time within 10 years the State will account to anyone lawfully entitled to the property. 3 Comp. Laws 1929, Sec. 13476."

POINT C.

The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is a decision of a Federal question probably in conflict with the decisions of this Court.

This is especially evident in the Court's statement that the seven year period of limitation was tolled by the suspension of the bank because the seven year period did not include any portion of the time that the bank was suspended by operation of law, on page 8 of his opinion:

> "Inactivity of the depositor for seven years, *due to other causes than operation of law,* is a *conditio sine qua non* of all the statutes upon which any right of escheat must essentially rest."

There is nothing in the fact of the bank's suspension and its being in receivership that makes a man less subject to the presumption of being dead, on the one hand, or precludes him from getting in touch with the bank as his depositary, on the other. In fact, the operation of the liquidation under the national banking act makes it imperative, if he is to be recognized in distribution. The "operation of law" does not suspend the laws of assignment, garnishment, attach-

ment, the tax laws, or any other law under which any person or persons had rights of action against the bank, nor does it suspend any other of the laws of descent. If a depositor dies, his heirs succeed to his right as a depositor. Those rights are not tolled by operation of law because the bank is insolvent and in liquidation.

The Court below set at naught the decisions of the Supreme Court of the State of Michigan applicable thereto, in violation of the direction of this Court.

Cope v. *Cope,* 137 U. S. 682, 11 Sup. Ct. 222, 34 L. Ed. 832;

Erie Railroad Co. v. *Tomkins,* 304 U. S. 64, 82 L. Ed. 1188;

Ruhlin v. *New York Life Insurance Co.,* 304 U. S. 202, 82 L. Ed. 1290.

POINT D.

The decision of said Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat by holding them not applicable, so far departs from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

The lower court set at naught the deliberate procedure provided for the escheat of deposits in national banks in liquidation by the Legislature of the State and approved by its Supreme Court, and prescribed a statute totally impotent to achieve the desired end, and not intended for such.

Beckwith v. *Bates,* 228 Mich. 400;

Braun v. *McPherson,* 277 Mich. 396;

Lafayette Transfer & Storage Co. v. *Public Utilities Commission,* 287 Mich. 488;

Erie Railroad Company v. *Tomkins,* 304 U. S. 64, 82 L. Ed. 1188;

Ruhlin v. *New York Life Insurance Co.,* 304 U. S. 202, 82 L. Ed. 1290.

Point E.

The decision of the Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat, holding them to be more akin to forfeiture than conservator statutes, involves an important question of Federal law as respects the comparative and concurrent fields of the operation and liquidation of national banks under the National Banking Act and the State laws relating to the descent of property and escheat, which should be settled by this Court.

The Circuit Court of Appeals first held that the procedure in the instant case was wrong, and then that the case was governed by the case of *First National Bank of San Jose* v. *California*, 262 U. S. 366, 43 Sup. Ct. 602, 67 L. Ed. 1030. In that case the statute of the State of California involved was a pure forfeiture statute, and so denominated by this Court. The statutes of Michigan, under which this action was brought, were held by the Supreme Court of Michigan to be of a conservator nature; and finally the effective objection made by Mr. Justice McReynolds in the *San Jose* case, viz. that the effective prosecution of the procedure under the strict forfeiture act of California would result in the breaking of the contract of deposit originally made by the bank with the depositor. That question is definitely not pertinent nor applicable in the case at bar. In the *San Jose* case the bank was solvent. In the instant case the First National Bank—Detroit was insolvent, and the contract with the depositors had been broken by operation of law on the part of the depository. When the reason for the rule ceased to exist, the rule fell.

First National Bank of San Jose v. *California*, 262 U. S. 366, 43 Sup. Ct. 602, 67 L. Ed. 1030,

in which is set forth the pertinent portion of the California statute in question.

Braun v. *McPherson*, 277 Mich. 396;
Michigan Statute of Escheats (R. 61-89).

POINT F.

The importance of the questions involved, compassing as they do the entire field of the liquidation of national banks during the past eight years, and still in progress in practically every State in the union; that appellant's action is a petition for a declaratory judgment, asking the aid of the Court for an interpretation and construction of the law governing escheated and escheatable estates in Michigan; the need of an authoritative and elucidating decision before this liquidation is completed; the conflicting interests of the Federal and the State authorities with respect to the liquidation of national banks in nearly every State in the union; the sovereign right of the State in great amounts of money; and that the public interest will be promoted by a prompt settlement by the Court of the questions involved.

The point is self-explanatory; the liquidating of this bank in the instant case involves several millions of dollars and much more in realty, as every national bank in the State of Michigan was closed during the bank closing, so-called, and by far the greater number of the large ones were in liquidation. It is common knowledge that the situation was similar in the other States. Legal questions relating to millions of dollars to which Michigan and many other States have rights under their sovereign authority so often upheld by this Court, are now in confusion, and will be until this Court has spoken.

It should be borne in mind that appellant's action is a petition for a declaratory judgment, asking the aid of the Court in the interpretation and construction of the law governing escheated and escheatable estates in Michigan, and especially the remedial amendments to Act No. 238 of the Public Acts of Michigan for the year 1897 made by the Michigan Legislature. This being remedial legislation, it

can be considered by the Court up to the time of final opinion. See *Cooley's Constitutional Limitations, 8th Edition,* Vol. 2, Chapter XI, page 789.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory power, by granting writs of certiorari, and thereafter reviewing and reversing said decision.

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